

1995

# Betty Ann Romero v. Industrial Commission of Utah, Workers Compensation Fund, Little Ameriocan; Cigna Insurance Company; and Quality Inn Airport/Claythor, Inc. : Brief of Petitioner

Utah Court of Appeals

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Richard Sumsion; Workers Compensation Fund; Christopher a. Tolboe. Attorneys for Respondent/Appellee.

Wayne A. Freestone; Parker, Freestone, Angerhofer & Harding. Attorney for petitioner/Appellant.

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UTAH COURT OF APPEALS  
BRIEF

UTAH  
DC INT

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.A19  
DOCKET NO. 950197CA

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UTAH COURT OF APPEALS

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BETTY ANN ROMERO,  
Petitioner,

vs.

INDUSTRIAL COMMISSION OF UTAH,  
WORKERS COMPENSATION FUND,  
LITTLE AMERICAN; CIGNA INSURANCE\*  
COMPANY; and QUALITY INN  
AIRPORT/CLAYTHOR, Inc.,

Respondent.

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Appeal No. 950197-CA

Priority No. 7

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BRIEF OF PETITIONER/APPELLANT BETTY ANN ROMERO  
FOR PETITION FOR REVIEW

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Salt Lake City, Utah 84101

FILED

JUL 21 1995

COURT OF APPEALS

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UTAH COURT OF APPEALS

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BETTY ANN ROMERO,

Petitioner,

vs.

INDUSTRIAL COMMISSION OF UTAH,  
WORKERS COMPENSATION FUND,  
LITTLE AMERICAN; CIGNA INSURANCE\*  
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Respondent.

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### **JURISDICTION**

The Court of Appeals has jurisdiction to review an order of the Utah Industrial Commission pursuant to §35-1-86 Utah Code Ann.

### **NATURE OF PROCEEDINGS**

This is an appeal for review of an Order of the Utah Industrial Commission.

### **STATEMENT OF ISSUES**

The issues presented for review on appeal are as follows:

1. Whether or not the Industrial Commission arbitrarily disregarded competent evidence in favor of unsubstantial contradictory evidence when it ruled that the accidents did not take place.
2. Whether or not the Industrial Commission committed error by finding that the November 10, 1992 and February 28, 1992, accidents were subject to the Allen test analysis.

The standard of review is the "substantial evidence" standard. (See Willardson vs. Industrial Commission, 856 P.2d 371, 374 (Utah App. 1993); King vs. Industrial Commission, 850 P.2d 1281, 1285 (Utah App. 1993)).

### **DETERMINATIVE PROVISIONS**

Utah Code Ann. §35-1-86 states as follows:

"The Court of Appeals has jurisdiction to review, reverse, or annul any order of the commission, or to suspend or delay the operation or execution of any order."

### **STATEMENT OF CASE**

Petitioner sustained two injuries during the course of her employment at Little America Hotel. Petitioner injured her back on November 10, 1992 while lifting the corner of a mattress to tuck under the sheet. Little America Hotel paid all benefits to petitioner regarding this injury. On February 28, 1993, Petitioner again injured her back while bending over to clean behind the toilet. Petitioner was compensated for this injury by Little America Hotel as well.

Petitioner discontinued working for Little America Hotel due to the strenuous job duties it entailed.

Petitioner began working at Quality Inn Airport. On or about September 25, 1993, during the course of her employment at Quality Inn Airport, petitioner injured her back while lifting the corner of the mattress to tuck under the corner of the sheet. Petitioner's employer, Quality Inn Airport, denied the Petitioner's industrial injury claim based upon her prior injury while working for Little America Hotel. When Little America Hotel was joined in the action it also denied liability for all three industrial injuries.

On November 15, 1993, Petitioner filed an Industrial Disease and Accident Claim with the Industrial Commission of Utah, naming both Little America Hotel and Quality Inn Airport as defendants.

A hearing before the Administrative Law Judge at the Industrial Commission was held on May 23, 1994. On or about June 8, 1994, the Administrative Law Judge rendered its Findings of Fact, Conclusions of Law and Order. The Administrative Law Judge found that Petitioner failed to prove that she was injured on September 25, 1993, during the course of her employment while working for Quality Inn Airport. In addition, the Administrative Law Judge found that petitioner failed to prove that she had been injured on November 10, 1992 and/or February 28, 1993, during the course of her employment while working for Little America Hotel. However, Little America Hotel had already accepted liability and compensated the petitioner for the November 10, 1992 and February 28, 1993 industrial injuries.

The Administrative Law Judge found that the Petitioner's testimony was not internally consistent and contradicted the medical records at times. The Administrative Law Judge also seems to have found that the applicant's injuries at Little America Hotel and Quality Inn Airport were subject to scrutiny under the Allen test for pre-existing injuries. Finally, the Administrative Law Judge found that there was not adequate evidence of any of the three (3) injuries occurring and consequently, denied the petitioner's benefits.

On or about February 17, 1995, the Industrial Commission



issued its Order on Petitioner's Motion For Review, affirming the Administrative Law Judge's decision. The Industrial Commission also affirmed the Findings of Fact of Administrative Law Judge.

#### **STATEMENT OF RELEVANT FACTS**

On November 10, 1992, the Petitioner was performing her duties as a maid for Little America Hotel and was moving the bed out to tuck a sheet under the mattress. She felt a sharp pain in her back and immediately reported the injury to her supervisor. The Petitioner ceased to work and an Employer's First Report of Injury was filled out on November 18, 1992. (See Addendum A) The employer paid full benefits on the November 10, 1992 injury.

On February 28, 1993, in the course of the Petitioner's duties as a maid with Little America Hotel, the Petitioner was bending over the toilet to clean the floor, twisted around and once again felt immediate sharp pain in her back. The Petitioner immediately reported the injury to her supervisor and on that very date, an Employer's First Report of Injury was filled out and signed by the Petitioner's supervisor. (See Addendum B) Full benefits were paid to the Petitioner on the February 28, 1993 injury.

The Petitioner ceased to work for Little America because she felt that her duties were too strenuous and began to work for Quality Inn. On September 25, 1993, once again performing her duties as a maid for Quality Inn, the Petitioner was bending over

a mattress, lifting the corners in order to tuck in the sheets when she felt severe pain in her back. The Petitioner immediately reported the injury to her supervisor which resulted in an Employer's First Report of Injury being filled out. (See Addendum C).

Quality Inn denied the Petitioner's claim for benefits, claiming that the Petitioner's injuries were due to her accidents at Little America Hotel and that she did not incur compensable injury. Little America was also joined as a defendant just in case the Petitioner's injuries were in fact caused by her two (2) injuries while working at Little America Hotel.

The matter came to hearing before Administrative Law Judge Benjamin Simms. In the hearing, it was pointed out that in December 1991, and October 27, 1992, there were notations in the medical records indicating that the Petitioner had been treated for a sore back. Consequently, the Administrative Law Judge appears to have found that the Petitioner's injuries at Little America Hotel and Quality Inn were subject to scrutiny under the Allen test for pre-existing injuries. The Administrative Law Judge also seems to have found that there was not adequate evidence of any of the three (3) injuries occurring and consequently, denied benefits therefore. The Industrial Commission affirmed the Administrative Law Judge's Findings that the three injuries did not occur and did not address

the pre-exisiting injury issues.

#### **SUMMARY OF ARGUMENT**

The Commission disregarded competent evidence in finding that the Petitioner's accidents of November 10, 1992, February 28, 1993 and September 25, 1993, did not take place.

Because the Commission did not deem it necessary to rule on the pre-existing condition, the Commission committed an error when it applied the Allen test to the November 10, 1992 and February 28, 1993 industrial accidents and found that applicant suffered from a pre-existing condition when there are no medical records to support such a ruling.

#### **DETAIL OF ARGUMENT**

##### **POINT I**

##### **WHETHER OR NOT THE INDUSTRIAL COMMISSION COMMITTED ERROR BY FINDING THAT ALL THREE ACCIDENTS DID NOT HAPPEN.**

The Court of Appeals has authority to reverse the Industrial Commission's Order. (See U.C.A. §35-1-86). The standard applied by the Court of Appeals in reviewing the Industrial Commission's Order is "substantial evidence". (See Willardson vs. Industrial Commission, 856 P.2d 371, 374 (Utah App. 1993); King vs. Industrial Commission, 850 P.2d 1281, 1285 (Utah App. 1993)). "Substantial evidence" is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (See Willardson vs. Industrial Commission, 856 P.2d 371, 374 (Utah App. 1993)).

The Industrial Commission adopted the Administrative Law Judge's Findings of Fact (See Addendum E page 1). Thus, this appeal includes issues covered in the Administrative Law Judge's Findings of Fact and Conclusions of Law and Order.

The Industrial Commission arbitrarily disregarded competent evidence when it affirmed the Administrative Law Judge and found that the applicant had failed to establish medical causation. In Nicholson vs. Industrial Commission of Utah, 389 P.2d 730 (Utah 1964), the Supreme Court recognized the fact that it would not disturb the findings or the order of the Commission if they were supported by "substantial evidence". However, at the same time they recognized that the Supreme Court has a duty, particularly with reference to the denial of compensation, to determine whether the Commission has arbitrarily disregarded competent evidence in making its decision.

It appears that beginning on Paragraph 13, the Administrative Law Judge begins to attack the applicant's memory of the accidents. Although it is not clear, it appears that the applicant's inability to recall the dates of each accident was a basis for denial of benefits. In Paragraph 13, on Page 4, of his Findings, (See Addendum D) The Administrative Law Judge states that the applicant was not knowledgeable as to dates and places of critical events, and that the medical records show the information she gave to her

doctors were incorrect. However, an examination of the record indicates that she simply became confused as to which accident occurred on which date. In paragraph 14, the Administrative Law Judge points out that the applicant believed to have injured herself on November 10, 1992, while cleaning behind the toilet. There is no question she injured herself on November 10, 1992. There is a First Report of Injury, which was timely filed with the Industrial Commission so stating. (See Addendum A) She also clearly injured herself on February 28, 1993. However, as stated in First Report of Injury, it was while putting a sheet on the bed. A Copy of said first report of injury is attached hereto as (Addendum B). On cross examination, it was brought out by Little America's counsel that the applicant had in fact, transposed the two injuries. (See page 79 of Transcripts, Addendum F) She had mistakenly believed that she had injured herself on November 10, 1992, while cleaning behind the toilet, when in fact, on that date, she had injured herself while making a bed on that date. She also mistakenly believed that on February 28, 1993, she injured herself while making a bed, when in fact, the injury on that date occurred while cleaning behind the toilet. It is clear that the applicant understood that she injured herself on those two dates, but was mistaken as to how she had injured herself. The medical records are clear. The first report of injury on the November 10, 1992,

accident specifically states that the applicant had injured herself while moving a bed out to put a sheet under the mattress. The first report of injury for February 28, 1993, specifically states that she injured herself while bending over the toilet to clean the floor. To deny benefits simply because the applicant mistakenly transposed the dates of two accidents that occurred more than 1 and 1 1/2 years ago is simply not reasonable.

The Administrative Law Judge goes on to state that on, "December 3, 1992, she told Dr. Sawchuk that about one month previously she had injured herself while making a bed and that she had no previous back problems". It should be born in mind that Dr. Sawchuk was seeing her on her first accident. Her report to Dr. Sawchuk of her injury while making a bed is consistent with the first report of injury dated November 10, 1992. The fact that she stated that she had no previous back problems is consistent with her testimony at the hearing, where she stated she did not recall having the pain in her back in December, 1991, and October 27, 1992.

The medical records all consistently reflect that the applicant injured her back on November 10, 1992 and February 28, 1993, while working at Little America Hotel, and on September 25, 1993, while working at Quality Inn. For the Administrative Law Judge to deny the applicant benefits simply because she could not

remember which injury occurred on which date is against the weight of the conclusive clear medical evidence and not in the least reasonable.

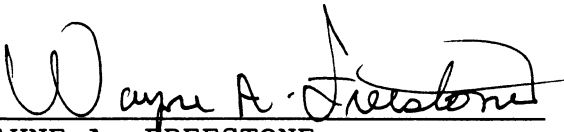
In paragraph 15, the Administrative Law Judge states that petitioner's second level supervisor testified that petitioner told her she hurt her back while putting a sheet on the bed. It is not clear why the Administrative Law Judge made this Finding. If he is using it with regard to the 1992 and 1993 injuries, it is clearly erroneous. The only supervisor to testify at the hearing was Alice Varella, petitioner's supervisor at Quality Inn Airport. (See page 89 of Transcripts, Addendum F). Her testimony was with regard to the September 25, 1993, accident. Ms. Varella's testimony was completely consistent with petitioner's testimony, (See page 32 of Transcripts, Addendum F) the employer's First Report of Injury and the medical records.

Neither the Administrative Law Judge's Findings of Fact or the Industrial Commission's opinion gave any Finding of why they ruled that the September 23, 1993, accident did not occur. The petitioner testified that she injured herself tucking a sheet under a mattress. (See page 32 of Transcripts, Addendum F). She promptly reported it to her supervisor. (See page 34 of Transcripts, Addendum F). A First Report of Injury was properly completed (See Addendum C). There was no contradictory evidence.

#### **CONCLUSION**

The Petitioner requests that this Court find that the Commission erred in finding that the accidents did not take place simply because the applicant, while giving testimony, became confused as to what accident took place on what date. The medical records are clear and concise as to when the injuries occurred.

DATED this 20 day of July, 1995.

  
\_\_\_\_\_  
WAYNE A. FREESTONE  
Attorney for Applicant



## **ADDENDUM**

## **ADDENDUM A**

**ACORD****WORKERS COMPENSATION EMPLOYER'S FIRST REPORT OF INJURY OR ILLNESS**  
CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter 48 hours in MIDDYV & 7-9)

OSHA CASE FILE #

1. EMPLOYER (Name &amp; State Mailing Address Incl. County &amp; Zip)

LITTLE AMERICA HOTEL AND TOWERS

500 SOUTH MAIN ST.

SALT LAKE CITY, UT 84101

CARRIER CLAIM NUMBER

JURISDICTION CLAIM NUMBER

EMPLOYER'S LOCATION ADDRESS (if different)

2. INDIVIDUAL

PARTNERSHIP

☒ CORPORATION

4. SIC CODE

5. UNEMPLOY.

LD. NO.:

7. PHONE NUMBER (AC, No., Ext.)

3. OTHER

6. FED. TAX

(801) 363-6781

8. NATURE OF BUSINESS (Mfg., Trade, Construction, Etc.)

HOTEL - RESTAURANT

9. SPECIFIC PRODUCTS

SERVICE

10. # EMPLOYEES

600

INSURANCE

11. CARRIER (Name, Address &amp; Phone No.)

CIGNA (801) 484-4595  
1245 E. BRICKYARD RD., SUITE 220  
SALT LAKE CITY, UT 84106

12. POLICY/SELF-INSURED NUMBER

13. POLICY PERIOD

14. CHECK IF APPROPRIATE

☒ SELF INSURANCE☐ STATE FUND

EMPLOYEE

15. NAME (Last, First, Middle)

Finlecchio, Betty

16. SOCIAL SECURITY NUMBER

528-48-8093

17. PHONE NO. (AC, No.)

(801) 31-2575

18. ADDRESS (Include County &amp; Zip)

746 N. 900 W #108  
SLC UT 84116

19. DATE OF BIRTH

10-19-58

20. MARITAL STATUS

divorced

21. EXEMPTION INFO

EMPLOYEE

SPOUSE

DEPENDANT CHILDREN

OTHER DEPENDANTS

22. REGULAR DEPT. OR DIVISION

Housekeeping

23. DATE HIRED

9/9/92

24. STATE WHERE HIRED

UTAH

25. OCCUPATION

Room Attendant

26. HOW LONG CURRENT JOB

2 months

27. CERTIFICATE NUMBER (if Under 18)

WAGE INFORMATION

28. RATE

4.50

29. HOUR

DAY

30. WEEK

40 hrs

31. OTHER:

32. DATE RETURNED TO WORK

12-21-92

33. FULL PAY FOR DAY OF INJURY?

☒ YES☐ NO

34. DID SALARY CONTINUE?

☒ YES☐ NO

35. AVERAGE

WAGE

AT TIME OF INJURY

40 hrs.

36. DOES EMPLOYEE RECEIVE PAY IN KIND?

☒ YES☐ NO

YES (Explain):

OCCURRENCE

37. PLACE OF ACCIDENT OR OCCURRENCE (incl. State)

8th Floor

38. COUNTY OF INJURY

SALT LAKE

39. DATE OF INJURY/ILL

11/10/92

40. TIME OF OCCURRENCE

8:00 PM

41. TIME WORKDAY BEGAN

8:00 AM

42. LAST WORKDATE

11/10/92

43. DATE EMPLOYEE NOTIFIED

11/18/92

44. INDIVIDUAL NOTIFIED

G. G. Villalobos

45. DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL (include part of body affected, eg. amputation of right hand finger at 2nd joint, back and arm, head protruding)

fight muscle back

46. DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURRED WITH DETAILS OF HOW EVENT OCCURRED (include name of other individuals involved, tools, machinery, objects, vapors, chemicals, reactions, unnatural motions of employee)

moving bed out to put sheet under mattress

47. IF FATAL, GIVE

DATE OF DEATH:

NA

48. WERE SAFEGUARDS OR

SAFETY EQUIPMENT PROVIDED?

49. YES

☒ NO

50. WERE THEY

USED?

51. YES

☐ NO

52. PHYSICIAN (Name &amp; Address)

53. Hospitalized

Out-Patient

Emergency Room

In House Treatment

First Aid

54. HOSPITAL (Name &amp; Address)

55. WITNESS (Name &amp; Phone Number)

56. DATE MAILED TO INSURER

57. PREPARED BY NAME &amp; TITLE

J. J. Wall

11/18/92

58. PHONE NUMBER (AC, No., Ext.)

(801) 363-6781

ACORD 4 (10/88)

SEND REPORT IMMEDIATELY. DO NOT WAIT FOR DOCTOR'S REPORT. © ACORD CORPORATION 1988

## **ADDENDUM B**

SNC	CIGNA
OSHA	RECORD
OSHA CASE FILE #	

# ACORD

WORKERS COMPENSATION EMPLOYER'S FIRST REPORT OF INJURY OR ILLNESS  
CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 161 (Enter all dates in JADONY format)

1. EMPLOYER (Name &amp; State Mailing Address incl. County &amp; Zip)

LITTLE AMERICA HOTEL AND TOWERS

500 SOUTH MAIN ST.

SALT LAKE CITY, UT 84101

CARRIER CLAIM NUMBER

JURISDICTION CLAIM NUMBER

EMPLOYER'S LOCATION (ONE OR MORE)

2. INDIVIDUAL ☐ PARTNERSHIP ☒ CORPORATION ☐ 4. SIC CODE

5. UNEMPLOY.

1. F.D. TAX

7. PHONE NUMBER (AC. No., Ext.)

(801) 363-6781

8. NATURE OF BUSINESS (Mfg., Trade, Construction, Etc.)

HOTEL - RESTAURANT

9. SPECIFIC PRODUCTS

SERVICE

10. # EMPLOYEES

600

## INSURANCE

11. CARRIER (Name, Address &amp; Phone No.)

CIGNA (801) 484-4595  
1245 E. BRICKYARD RD., SUITE 220  
SALT LAKE CITY, UT 84106

12. POLICY/SELF-INSURED NUMBER

13. POLICY PERIOD

14. CHECK IF APPROPRIATE ☒ SELF INSURANCE ☐ STATE FUND

## EMPLOYEE

15. NAME (Last, First, Middle)

Betty Romero

16. SOCIAL SECURITY NUMBER

528-08-8093

17. PHONE NO. (AC. No.)

575-6513

18. ADDRESS (Include County &amp; Zip)

1205 W. Redwood Rd.  
S.L.C., UT 84116

19. DATE OF BIRTH

10-19-58

20. MARITAL STATUS

M

21. EXEMPTION (If so, state)

EMPLOYEE ☐ SPOUSE ☐ DEPENDANT CHILDREN ☐ OTHER OR PENDANT ☐

24. REGULAR DEPT. OR DIVISION

House Keeping

25. DATE HIRED

9-9-92

26. STATE WHERE HIRED

UTAH

27. OCCUPATION

Housekeeper

28. HOW LONG CURRENT JOB

5 1/2 mo.

29. CERTIFICATE NUMBER (If Under 18)

## WAGE INFORMATION

30. RATE

4.75

☒ HOUR

DAY

☐ WEEK

MONTH

☐ OTHER:

31. DATE RETURNED TO WORK

3-30-91

32. FULL PAY FOR DAY OF INJURY?

☒ YES ☐ NO

33. DO SALARY CONTINUE?

☒ YES ☐ NO

34. AVERAGE WAGE PER HOUR AT TIME OF INJURY

40 hrs

35. DOES EMPLOYEE RECEIVE PAY IN HAND?

☒ NO ☐ YES (Specify):

## ACCIDENT

36. PLACE OF ACCIDENT OR OCCURRENCE (incl. State)

2163

37. COUNTY OF INJURY

SALT LAKE

38. DATE OF INJURY

2-28-93

39. TIME OF OCCURRENCE

5:35 AM PM

40. TIME WORKDAY BEGAN

9:00 AM PM

41. LAST WORKDATE

2-28-93

42. DATE EMPLOYEE NOTIFIED

2-28-93

43. INDIVIDUAL NOTIFIED

Sterling, C. Tillet

44. DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL (Include part of body affected, eg. amputation of right index finger at 2nd joint, fractured arm, lead poisoning)

Middle of lower back

45. DESCRIBE EMPLOYEE'S ACTIVITIES WHEN INJURY OCCURRED WITH DETAILS OF HOW EVENT OCCURRED (Include name of other individuals involved, tools, machinery, objects, vapors, chemicals, radiations, unnatural motions of employee)

Bending over by toilet to clean floor

46. IF FATAL, GIVE DATE OF DEATH:

NA

47. WERE SAFETY GUARDS OR SAFETY EQUIPMENT PROVIDED?

☒ YES ☐ NO

48. WERE THEY USED?

☒ YES ☐ NO

49. PHYSICIAN (Name &amp; Address)

50. ☒ Hospitalized ☐ Out Patient ☐ Emergency Room ☐ In House Treatment ☐ First Aid

51. HOSPITAL (Name &amp; Address)

Insta Care  
55 W. Redwood

52. WITNESS (Name &amp; Phone Number)

Resigned 4-19-93

Time loss (30) days

53. DATE MAILED TO INSURER

54. PREPARED BY NAME &amp; TITLE

Stephanie Tillet - Assistant Night Housekeeper

55. PHONE NUMBER (AC. No., Ext.)

(801) 363-6781

ACORD 4 (10/88)

SEND REPORT IMMEDIATELY. DO NOT WAIT FOR DOCTOR'S REPORT. © ACORD CORPORATION 1988

## **ADDENDUM C**

# PHYSICIAN'S INITIAL REPORT OF WORK INJURY OR OCCUPATIONAL DISEASE

This report must be filed pursuant to rule R568 2-3 (A)

Industrial Commission - Industrial Accident Division  
160 East 300 South 3rd Floor, P.O. Box 146810, Salt Lake City, Utah 84114-6610

PLEASE PRINT OR TYPE

Insurance Company		Quality Inn		Do Not Use This Space	
Address:		G.A.B. 7001 So 900 E		CLAIM NO POLICY NO Class Code	
PATIENT	1. Employee's First Name	Middle Initial	Last Name	2. Social Security No	3. DOB
	Betty	A	Ruiz	128-75-69	10-11-55 F
	5. Street Address	City	State	Zip	6. Phone No
1205 N. Redwood Pl	SLC, UT	84114	557-1020		
8. Name of Employer	10. Address		11. Phone No		
Quality Inn	5575 N. MO		557-1020		
HISTORY	12. Date Injured	Hour	13. Last Date Worked	14a. Has This Part Been Injured Before?	
	9-25-93	1015	9-25-93	<input checked="" type="checkbox"/> yes <input type="checkbox"/> no	
	14b. If "Yes" State When and Described:				
15. Employee's Statement of Cause of Injury or Illness (in First Person)					
making Bed Strained Back - Back Pain/INJ					
16. Describe Complaints (in First Person):					
Back INJ					
17. Findings of Examination:					
LS stand					
EXAMINATION	18. X-Ray? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				19. ICD-9 Codes:
	Findings:				
	20. Diagnosis (Written Description)				
21. Is the Condition Requiring Treatment the Result of the Industrial Injury or Exposure Described?				If "No" Explain:	
<input checked="" type="checkbox"/> yes <input type="checkbox"/> no <input type="checkbox"/> undetermined				No	
TREATMENT	22. Date of First Treatment		Hour	23. Type of Treatment	
	9/25/93		PM	Physical Therapy	
24. If Hospitalized, What Hospital?			25. If Case Referred to Another Physician, Give Physician's Name and Address		
<input type="checkbox"/> In-Patient <input checked="" type="checkbox"/> Out-Patient					
DISPOSITION	26. Is Condition Medically Stationary?		27. Is Any Further Treatment Required?		28. Will Injury Cause Permanent Impairment?
	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no		<input type="checkbox"/> yes <input checked="" type="checkbox"/> no		<input type="checkbox"/> yes <input checked="" type="checkbox"/> no
	29. Does Injury Prevent Return to Regular Employment?		Modified Employment?		30. Date Resumed for Work
	<input type="checkbox"/> yes <input checked="" type="checkbox"/> no		<input type="checkbox"/> yes <input checked="" type="checkbox"/> no		4/28
31. Remarks or Outline of Proposed Treatment:					
32. Are There Any Conditions That Would Retard or Prevent Recovery? <input type="checkbox"/> yes <input checked="" type="checkbox"/> no					
33. Name of Physician and Degree:			34. Address		35. Phone No.
Ross L. L. L.					
36. Federal Tax ID Number		37. Date:	38. Signature (Physician's Own Signature Please)		

Willed Industrial Commission

Yeller: Employee

Pitt: Insurance Carrier

Goldenred: Physicians File

## **ADDENDUM D**



An evidentiary hearing was held, during which oral and written evidence was presented. Prior to the hearing a motion to dismiss was made by Quality Inn Airport, and its insurance carrier the Workers Compensation Fund of Utah. That motion was denied and the

BETTY ANN ROMERO  
ORDER  
PAGE TWO

Workers Compensation Fund of Utah (WCF) was given permission to renew its motion at the conclusion of the hearing. During closing argument, and on May 26, 1994, the Workers Compensation Fund of Utah (WCF) renewed its motion to dismiss. The motion to dismiss was responded to by Ms. Romero prior to the hearing.

At the conclusion of the evidentiary hearing, the WCF was given additional time to supply medical records and payroll records without objection by Ms. Romero. These materials were submitted on May 26, 1994. The matter was taken under advisement by the Administrative Law Judge. Having been fully advised in the premises, the Administrative Law Judge now enters the following Findings of Fact, Conclusions of Law, and Order.

Ms. Romero admits that the Allen test applies in this case. Opposition to Motion to Dismiss dtd Feb. 8, 1994 at the second unnumbered page; see Allen v. Ind. Comm'n, 729 P.2d 15 (Utah 1986). Since all of the parties agree that the Allen test applies to the claimed injury at the Quality Inn (Airport), the Allen test will be applied as appropriate.

#### FINDINGS OF FACT:

1. At the time of the injuries, Ms. Romero was married and had three dependent children.

2. The medical records show that she fell approximately the end of December 1991, and incurred a three to four inch bruise over her lumbar spine. Ms. Romero denies this, but there is no reason to believe that the contemporaneously recorded medical record is inaccurate. Medical Records (MR) at 37. There was no evidence that this fall was job related.

3. On October 27, 1992, a physician at LDS hospital reported that she had a lumbar sprain. The medical records show that she felt pain when bending over and straightening up. The medical examination on that date showed that she had paralumbar tenderness and spasm. The records state that she had "[n]o known injury, but she works as a maid." MR at 46 & 43. The medical records thus show that she clearly had a preexisting lumbar sprain prior to the dates of her claimed industrial injuries.

4. She was working for Little America on November 10, 1992. Her duties included those customary to maid work such as bed making, dusting, vacuuming, and general cleaning of the guest rooms.

5. She claims that she incurred an injury as she was bending over to clean behind a toilet. She felt a pop, and her "back went out." She went to her supervisor and told her that she could not

BETTY ANN ROMERO  
ORDER  
PAGE THREE

finish the room in which she was working. She then went home, and went to the doctor. The effort expended in cleaning behind the toilet does not meet the requirement of an unusual effort.

6. She had cleaned and made the beds in 12 rooms on the day of the injury. One or two rooms had foldaway beds which took 20 pounds of effort to close. She had made about 15 beds on that day, and if she made the beds in the difficult and awkward manner which she described, the weight of the portion of mattress which she was lifting at the time of the accident would have been about 20 pounds by her admission.

7. She made the beds by pulling the bed away from the wall. She then put a lower sheet on the bed, and pulled up the whole lower end of the mattress to tuck it in. She then placed an upper sheet on the bed, as well as a blanket. She tucked these latter two coverings underneath the lower end of the mattress. She then placed a bedspread on top.

8. Although most residents of Utah do not make the beds in 12 rooms during an approximately eight hour period, the making of 15 beds, vacuuming, dusting, and cleaning does not appear to be an unusual effort. Since the Allen test seems to require comparison between the job on which the worker was injured, and the exertion an average person would engage in at home, it would seem that the exertion expended in a typical home in Utah would be appropriate for consideration. In many homes in Utah, the homemaker lifts young children weighing 10 to 30 pounds many times per day to feed them, bathe them, change their diapers, and otherwise care for them. In addition, the homemaker makes beds, launders, cleans, dusts, mops, vacuums, carries out garbage, mows lawns, does gardening, and shops for groceries, among other duties.

9. In general, there is no unusual exertion required to make a bed (or even 15 beds) in the proper manner. Ms. Romero's testimony was that when she lifted the corner of the mattress that it possibly required 20 pounds of exertion. That is about the weight of a small child. It is noted that the second level supervisory maid testified on behalf of Airport that there was no reason for the mattress to be lifted to tuck in the sheets and blankets. For the purpose of this decision, it will be assumed that Ms. Romero made the bed in the manner she described which was more difficult than required.

10. On Monday, September 25, 1993, she was working as a maid for Quality Inn Airport (Airport). Her back had been hurting when she went to work for Airport. She was slower than the other maids, and her supervisor told her that she needed to work faster.

11. She had made 11 beds on this day, and was bending over to

BETTY ANN ROMERO  
ORDER  
PAGE FOUR

tuck in the sheets. Her back "went out" on her. She described her work as being much the same as that when she worked for Little America. The evidence shows that she was a methodical, but slow employee. Ms. Romero's employer stated that everyone worked faster than Ms. Romero and had requested that Ms. Romero work faster. There was no indication that she complied with this request. Ms. Romero used this request as the basis for her cause of her injury, but the record clearly shows, and Ms. Romero freely admits that she already had back problems prior to coming to work for Airport.

12. The alleged industrial accidents were all unwitnessed. The evidence shows that the applicant went to her supervisor and her complaints after the alleged Airport injury were that the pain did not go away; she could not sleep at night; she could not sleep on her right side, and, she had pain in her lower back.

13. Ms. Romero was not knowledgeable as to dates and places of critical events, and the medical records show that the information which she gave to doctors was often incorrect. Witnesses often have lapses as to routine events, but significant trauma or injury is generally remembered. The problem with this case is that the medical records as reported by Ms. Romero to the medical personnel show that she gave several different dates for her alleged injury while cleaning the toilet. A few days slippage is not significant, but the medical records show that a physician's first report of injury was filed on February 28, 1993. The report claimed an injury while cleaning behind a toilet on this date.

14. She testified at the hearing that her injury occurred on November 10, 1992. The medical records contradict this testimony. On December 3, 1992, she told Dr. Sawchuk that about one month previously that she had injured her back while making a bed, and that she had no previous back problems. MR 23. This statement conflicted with the first report of injury which showed an injury while cleaning behind a toilet, and the medical records which showed that she did complain of back discomfort in December 1991, and October 27, 1992.

15. Ms. Romero's second level supervisor at Airport testified that Ms. Romero told her that she had hurt her back while placing a sheet on top of the bed. The supervisor did not witness the injury, and Ms. Romero told her that she was going to go home.

16. She was earning \$4.25 cents per hour while working for Airport. She did not remember for how many hours she was scheduled to work nor did she remember how many hours she worked. She stipulated that the payroll records accurately reflected her pay and hours worked. The payroll control sheet shows that she worked 173.25 hours during the five weeks preceding her injury. Exhibit D-2. Dividing those hours by five yields 34.65 hours.

BETTY ANN ROMERO  
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DISCUSSION:

Assuming that Ms. Romero's exertion while making the beds was unusual, and met the Allen test, when and if the injuries actually occurred remains elusive. The evidence is inconclusive, and does not show by a preponderance that the injuries occurred when and how stated. Ms. Romero's testimony was not internally consistent and contradicted the medical records at times. Applicants are given leeway since it is recognized that people do not have photographic memories, and some slippage occurs with time. However, there was more than the normal slippage in the testimony in this case, and regrettably the puzzle cannot be completed correctly without help from the parties.

CONCLUSIONS OF LAW:

34.65 hours is found to be a fair representation of the weekly hours worked by Ms. Romero as required by U.C.A. Section 35-1-75 (1953 as amended 1987).

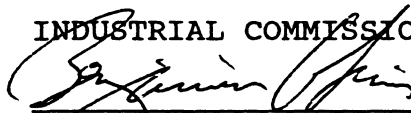
ORDER:

IT IS HEREBY ORDERED that the claim of Betty Ann Romero against Little America and Quality Inn (Airport) be dismissed for failure to prove that she was injured on or about November 10, 1992, February 28, 1993, and September 25, 1993 while she was working as a maid.

IT IS FURTHER ORDERED that any Motion for Review of the foregoing shall be filed in writing within thirty (30) days of the date hereof, specifying in detail the particular errors and objections, and, unless so filed, this Order shall be final and not subject to review or appeal. In the event a Motion for Review is timely filed, the parties shall have 15 days from the date of filing with the Commission, in which to file a written response with the Commission in accordance with U.C.A. Section 63-46b-12(2).

DATED THIS 8 day of June 1994.

INDUSTRIAL COMMISSION OF UTAH

  
\_\_\_\_\_  
Benjamin A. Sims  
Administrative Law Judge

CERTIFICATE OF MAILING

I hereby certify that on the 8 day of June 1994, the attached FINDINGS OF FACT, CONCLUSIONS OF LAW and ORDER in the case of Betty Ann Romero was mailed, postage pre-paid except as noted to the following persons at the following addresses:

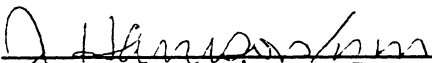
Betty Ann Romero  
211 S Holden St  
Midvale, UT 84047

Wayne Freestone, Atty  
50 W 300 S #900  
SLC, UT 84101

Richard Sumsion, Atty  
The Workers Compensation Fund of Utah (Drop Box)

Christopher A. Tolboe, Atty  
124 S 600 E #100  
SLC, UT 84102

INDUSTRIAL COMMISSION OF UTAH

  
\_\_\_\_\_  
June S. Harrison, Paralegal  
Adjudication Division

/jsh

## **ADDENDUM E**

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THE INDUSTRIAL COMMISSION OF UTAH

BETTY A. ROMERO

Applicant,

vs.

LITTLE AMERICA, CIGNA  
INSURANCE COMPANY, QUALITY  
INN AIRPORT/CLAYTHOR INC.  
and WORKERS COMPENSATION  
FUND OF UTAH,

Defendants.

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ORDER DENYING  
MOTION FOR REVIEW

Case Nos. 93-1273,  
93-1274 & 93-1275

---

Betty A. Romero asks The Industrial Commission of Utah to review an Administrative Law Judge's decision denying her claim for benefits under the Utah Workers' Compensation Act.

The Commission exercises jurisdiction over this Motion For Review pursuant to Utah Code Ann. §63-46b-12, Utah Code Ann. §35-1-82.53, and Utah Admin. Code R568-1-4.M.

BACKGROUND

Ms. Romero has filed three separate claims for workers' compensation benefits, each related to back injuries that allegedly occurred at work.

Ms. Romero reports suffering her first injury on November 10, 1992, while working as a maid at Little America. The second injury occurred on February 28, 1993, again while Mrs. Romero was working as a maid at Little America. The third injury occurred on September 25, 1993, while Ms. Romero worked as a maid at the Airport Quality Inn. Quality Inn and its insurance carrier, the Workers Compensation Fund of Utah, denied this claim for benefits on the grounds it resulted from her preexisting back condition and not from her work at Quality Inn.

After a hearing, the ALJ denied Ms. Romero's claims for benefits on the grounds she had failed to prove she suffered work related injuries from any of the three incidents described above.



ORDER DENYING MOTION FOR REVIEW  
BETTY A. ROMERO  
PAGE TWO

Ms. Romero then filed this Motion For Review, raising two points: 1) The ALJ improperly applied the Allen test for legal causation, and 2) the evidence does not support the ALJ's conclusion that the injuries did not occur.

**FINDINGS OF FACT**

The Commission affirms the findings of fact set forth in the decision of the ALJ. In summary, on January 16, 1991, Ms. Romero was examined at Instacare Clinic for lumbar back pain. She reported she had fallen and a bruise was observed over the lumbar region of her back. On October 27, 1992, she was diagnosed with a lumbar sprain. The available medical records do not explain the cause of the sprain.

On November 10, 1992, while making a bed at Little America, Ms. Romero claims to have "felt a pop" in her back, then her back "went out." On December 3, 1992, she was examined and treated by Dr. Sawchuck, who diagnosed facet joint syndrome, lumbar sprain/strain and lumbar spasm. He prescribed medication, rest and physical therapy. Dr. Sawchuck released Ms. Romero to resume her regular work duties on December 22, 1992. Little America paid Ms. Romero's medical expenses and temporary total disability compensation in connection with this injury.

On February 28, 1993, again while working at Little America, Ms. Romero suffered back pain as she bent over to clean behind a toilet. She received medical attention at Instacare and was then examined by Dr. Sawchuck. Dr. Sawchuck diagnosed recurrent lumbar sprain/strain and prescribed medication and physical therapy. Ms. Romero underwent a CT scan which showed facet arthritis and mild grade disc bulges. Ms. Romero was discharged from further treatment shortly after June 2, 1993.

Thereafter, Ms. Romero began work as a maid for Quality Inn. At time of hire, she told Quality Inn that although she suffered from arthritis and a bad back, she was able to perform her work duties. On September 25, 1993, while making a bed at Quality Inn, she again experienced back pain. According to Ms. Romero, she was lifting the end of a mattress to tuck in a sheet when "her back went out on her." She was examined by Dr. Greenlee at LDS Hospital, who noted her history of arthritis and back sprain.

**DISCUSSION AND CONCLUSIONS OF LAW**

The Utah Workers' Compensation Act provides compensation and medical benefits to workers injured by accident arising out of and in the course of employment. In this case, the ALJ concluded Ms. Romero had failed to prove the existence of any work related injuries and therefore denied her claims for benefits.

ORDER DENYING MOTION FOR REVIEW  
BETTY A. ROMERO  
PAGE THREE

The record shows that Ms. Romero was confused as to the sequence of her injuries and did not give complete information to her treating physicians. The ALJ, having the opportunity to evaluate the testimony on a first hand basis, concluded that the injuries did not occur. Based on its review of the record, the Commission agrees with the ALJ's conclusion.

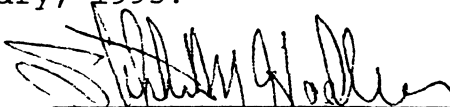
Because the Commission has concluded that the alleged industrial accidents did not occur, it is not necessary to consider Ms. Romero's argument regarding the proper application of the Allen test of legal causation.

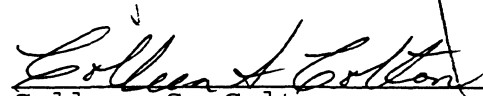
ORDER

The Commission hereby affirms the decision of the ALJ and dismisses Ms. Romero's Motion For Review. It is so ordered.

Dated this 17<sup>th</sup> day of February, 1995.

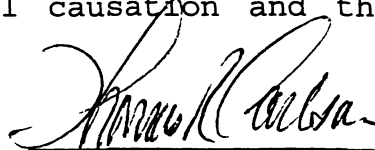


  
Stephen M. Hadley  
Chairman

  
Colleen S. Colton  
Commissioner

I dissent. I cannot accept the ALJ's conclusion that Ms. Romero did not suffer any industrial accidents, when the record shows that in each of the three accidents, she promptly reported her injury to her supervisor and received medical treatment. Furthermore, in the case of the first and second accidents, her employer acknowledged that the accidents occurred by paying workers' compensation benefits.

Because I conclude that Ms. Romero did suffer the industrial accidents as she claims, I would remand this case to the ALJ for the purpose of addressing the other issues related to Ms. Romero's claim, such as medical and legal causation and the amount of compensation due.

  
Thomas R. Carlson  
Commissioner

IMPORTANT! NOTICE OF APPEAL RIGHTS FOLLOWS ON NEXT PAGE.

ORDER DENYING MOTION FOR REVIEW  
BETTY A. ROMERO  
PAGE FOUR

NOTICE OF APPEAL RIGHTS

Any party may ask the Commission to reconsider this Order by filing a Request For Reconsideration with the Commission within 20 days of the date of this Order. Alternatively, any party may appeal this Order to the Utah Court of Appeals by filing a Petition For Review with that Court within 30 days of the date of this Order.

CERTIFICATION OF MAILING

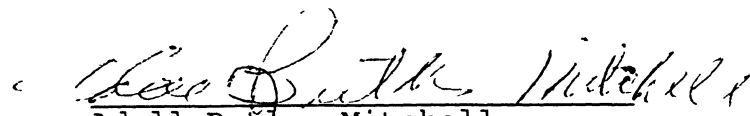
I certify that a copy of the foregoing Order Denying Motion For Review in the matter of Betty A. Romero v. Little America, et al., Case No.s 93-1273, 93-1274, & 93-1275, was mailed, first class postage prepaid this 17 day of February, 1995, to the following:

BETTY ANN ROMERO  
211 SOUTH HOLDEN STREET  
MIDVALE, UTAH 84047

RICHARD SUMSION  
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WORKERS COMPENSATION FUND OF UTAH  
P. O. BOX 57929  
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CHRISTOPHER A. TOLBOE  
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SALT LAKE CITY, UTAH 84102

WAYNE A. FREESTONE  
ATTORNEY AT LAW  
BANK ONE TOWER  
50 WEST 300 SOUTH, SUITE 900  
SALT LAKE CITY, UTAH 84101

  
Adell Butler-Mitchell  
Support Specialist  
Industrial Commission of Utah

## **ADDENDUM F**

1 The only difference is when they put their over blanket  
2 on the bottom you have to make sure -- you have to make  
3 sure -- you have to put your hand here and then make  
4 sure it curves on the end of the blanket neatly.

5 Q Okay. So you're indicating that you have to  
6 put your hand on the blanket?

7 A Uh huh. You had to pull it out and you had  
8 to make sure the bottom was -- like it turned with the  
9 bed look neatly.

10 Q What -- What turned?

11 A The blanket.

12 Q The blanket was around the corner of the bed  
13 you mean?

14 A Uh huh. Uh huh. On the bottom.

15 Q Okay. Who showed you that?

16 A I can't remember her name.

17 Q Okay.

18 A Some lady.

19 Q Was it -- Was it your Supervisor?

20 A No.

21 Q Okay. Okay. On September 25th, 1993, okay,  
22 describe to us exactly what it was you were doing when  
23 your back started hurting.

24 A I was bending over starting to make a bed.

25 Q Okay. When you mean starting, tell me what

1       your hands and your arms were doing.

2           A       Okay. I put the sheet on.

3           Q       Okay.

4           A       And I was starting to straighten the sheet  
5 and then I was starting to tuck it under and then my  
6 back popped.

7           Q       Okay. When you say you were starting to  
8 tuck it under, had you lifted at all?

9           A       On the bottom, yeah, to tuck it under.

10          Q       Okay. Now, between your last injury, which  
11 was February 1993, and September of 1993, before you  
12 had your last injury okay, when did your -- when and if  
13 your back started -- stopped hurting, okay after the  
14 February 1993 accident, could you describe that to us?  
15 Did it ever stop hurting after that accident?

16          A       It didn't really stop hurting. The doctor I  
17 saw said that -- that the pain would be there all the  
18 time.

19          Q       Okay. So when you were working in September  
20 of 1993, when you went to work that morning, was your  
21 back hurting?

22          A       Yeah. And when I -- Okay. When I got hired  
23 from Little -- not Little America -- Quality Inn, I  
24 told my boss --

25          Q       When you got hired from Quality Inn you say?

1           A       Yeah.

2           Q       For Quality Inn?

3           A       Uh huh.

4           Q       Okay.

5           A       When I got hired from Quality Inn, I told my  
6 boss that I had arthritis.

7           Q       Okay. Now, when you were bending over and  
8 beginning to make the bed when you said that your back  
9 started hurting on September 25th, '93, did that hurt  
10 more than it had when you'd come to work?

11          A       Yes. It did. Hurt more, a lot more.

12          Q       A lot more?

13          A       Uh huh.

14          Q       Okay. What did you do then after it started  
15 hurting?

16          A       I went and told my boss that my back, you  
17 know, went out on me and she said to go home and maybe  
18 it will be better the next day.

19          Q       Okay.

20          A       But I didn't, I went to the doctors.

21          Q       Okay. Have you been seeing a doctor since  
22 then?

23          A       A lot of doctors.

24          Q       Okay. Okay. Describe to me now how your  
25 back feels.

1           A       The pain don't go away, I can't sleep at  
2 night, I only can sleep on one side, I can't -- If I  
3 sleep on my right side it feels like I'm going to  
4 faint, so all night long I only can sleep on one side.

5           Q       Okay.

6           A       The pain never goes away.

7           Q       Okay. Describe where the pain is.

8           A       Right there.

9           Q       Indicating your lower back?

10          A       Uh huh. Yeah.

11          Q       Okay. Do you have any -- Do you have pain  
12 anywhere else?

13          A       No. Just my lower back.

14          Q       Okay. After your injury in September of  
15 1993, do you recall the doctor releasing you for light  
16 duty work?

17          A       Yes.

18          Q       Okay. Were you able to do that?

19          A       I -- Okay. Are you talking about this --  
20 the --

21          Q       The last injury.

22          A       Okay. He put me to light duty work and I  
23 got a paper from my Supervisor saying they didn't have  
24 no light duty work.

25          Q       Okay.



1       about.

2               Q       Okay. I'm talking about going to InstaCare.

3               A       I went there a couple of times.

4               Q       In October of 1992.

5               A       I don't remember, because I went there a  
6 couple of times.

7               Q       Okay. But you do remember telling the  
8 doctor when you went there in October of '92 --

9               A       I don't remember on the date on that.

10              Q       Okay. But you remember one time when you  
11 went to InstaCare that you told the doctor that you  
12 didn't remember having hurt yourself?

13              A       I don't remember. I don't.

14              Q       Ms. Romero, I don't mean to confuse you or  
15 anything, but is it possible that you have the  
16 incidents regarding making the bed and the toilet  
17 incident confused and reversed?

18              A       No.

19              Q       Okay. You believe that you actually injured  
20 yourself leaning over the toilet --

21              A       Yes.

22              Q       -- in late October or early November 1992?

23              A       Something like that.

24              Q       Is that a yes?

25              A       Yeah.

1           Q       Okay. And you remember injuring your back  
2 lifting the bed in late February of 1993?

3           A       Uh huh.

4           Q       Okay. Do you recall telling Dr. Sawchuk on  
5 December 3rd, 1992 that approximately one month ago  
6 while at work she was bent over making a bed when she  
7 felt a popping sensation in her lower back?

8           A       Now, say that over. I didn't get that.

9           Q       Okay. On December 3rd, 1992 do you recall  
10 telling Dr. Sawchuk that approximately one month ago  
11 while at work you were bent over making a bed when you  
12 felt a popping sensation in your lower back?

13          A       Something like that. I can't remember.

14          Q       Okay. Now that I've told you that, does  
15 that clear up your memory as to the events and when  
16 they happened at Little America?

17          A       I just know that I hurt my back bending over  
18 a toilet and making the bed.

19          Q       Okay. You don't recall in which order --

20          A       No.

21          Q       -- you did hurt them?

22          A       I just hurt it.

23               MR. TOLBOE: Okay. I don't have any further  
24 questions.

25               THE COURT: Okay. Thank you. Mr. Freestone.

1 RE-DIRECT EXAMINATION

2 By MR. FREESTONE:

3 Q Just a couple of quick questions, Betty.  
4 Mr. Sumsion made reference to an InstaCare record,  
5 which is found on page thirty-nine, and it was dated  
6 apparently 11/14/91, and he noted that in that record  
7 it mentions -- says patient, and I'm not sure what that  
8 notation is, pain in low back and pressure constantly.  
9 Do you recall going to InstaCare around that time,  
10 11/14/91?

11 A I don't remember.

12 Q Okay. Well, the records indicate that  
13 apparently you had seen them then and there was also on  
14 the prior page, page thirty-eight, there's a notation  
15 11/15/91, which is one day prior to that, and about six  
16 lines down in the notations it says -- it has a zero  
17 with a slash through it and says back pain, which  
18 indicates no back pain.

19 A Yeah.

20 Q Do you recall talking about back pain on  
21 that date?

22 A I told them that I was -- I had like a knot  
23 way up here, but nothing down here, and then yeah, I  
24 asked them how come I had a knot up here, and he  
25 checked and he said -- he said he couldn't find

1 calling?

2 MR. SUMSION: Alice Varella.

3 THE COURT: Alice Varella if you'll come  
4 forward please, I'll need to swear you to an oath. Do  
5 you swear the testimony you shall give in this hearing  
6 shall be the truth, the whole truth and nothing but the  
7 truth, so help you God?

8 MS. VARELLA: I do.

9 THE COURT: Thank you very much. If you'll  
10 just take a seat there, Ms. Varella.

11 DIRECT EXAMINATION

12 By MR. SUMSION:

13 Q Would you state your name and place of  
14 employment, please?

15 A My name is Alice Varella and I work at the  
16 Quality Inn.

17 Q And how long have you worked there?

18 A I've worked there nine years.

19 Q And what is your present job?

20 A I am the Executive Housekeeper.

21 Q And how long have you been the Executive  
22 Housekeeper?

23 A For about eight years.

24 Q So during the time that Betty Ann Romero  
25 worked there, you were the Executive Housekeeper?

1           A       Yes, sir.

2           Q       And you've been present here today and  
3 you've heard her testimony?

4           A       I sure have.

5           Q       And you're acquainted with her?

6           A       Yes.

7           Q       And I've indicated previously from the  
8 record that she came to work at Quality Inn Airport on  
9 the 8th of August, 1993; does that sound approximately  
10 right?

11          A       Yes. Uh huh.

12          Q       Are you in charge of -- As the Executive  
13 Housekeeper, are you in charge of training and other  
14 operations involving the type of thing that she did?

15          A       No, sir. I don't train them. I have two  
16 girls that are my inspectors. They inspect the rooms  
17 and they train the girls.

18          Q       And do you have something to do with their  
19 training?

20          A       Yes. I train them.

21          Q       Okay.

22          A       And then I would go, you know, behind them  
23 and check the rooms. At random I'd pick up whoever  
24 rooms are and I'd see how they look like.

25          Q       Can you give us a brief description as to

1 the training that you provide the intermediate  
2 supervisors, the trainers?

3 A Yes. First they have to -- Their beds, we  
4 have -- we don't have double beds, every full rooms  
5 there's two double beds.

6 Q Okay.

7 A And I show them how to make the bed, how I  
8 want the bed to look, I have them check the shower  
9 walls, the dusting, the mirrors, the floors.

10 Q Okay. With respect to the beds, is it --  
11 are they instructed that they need to pull the beds out  
12 and push them back?

13 A No, sir.

14 Q That isn't necessary?

15 A If they pull the beds, it's because they  
16 want to, but our sheets are flat, so you just get it  
17 and throw it on, you know, take it and put it on the  
18 bed. You've got to make sure that balances and so much  
19 is left over, and you'll get the -- only the bottom  
20 one, you tuck it under with your hands, you don't even  
21 have to lift the mattress, you tuck -- that way you  
22 have to tuck it all the way around.

23 The other one you throw it and you make sure  
24 that it's level with, you know, with the end of the bed  
25 and put it even with the other one, throw your blanket,

1 and then you only tuck it -- we only tuck under at the  
2 foot of the bed, because a lot of our guests don't like  
3 to be -- you know, when they're going to bed the top  
4 sheet is tight under the bed and then you'll mess up  
5 all your bed when you pull them out and you're going to  
6 go to bed.

7 Q What about the blankets?

8 A The blankets are tucked all together on the  
9 bottom.

10 Q Is that -- Are they tucked the same time the  
11 sheet is tucked?

12 A Uh huh.

13 Q And as far as your instruction of the  
14 trainers, you never did give any instruction that they  
15 needed to lift any part of it, they could just slide it  
16 under and tuck it under; is that correct?

17 A All you have to do is slide it under with --  
18 you don't even have to pick up the mattress. You don't  
19 pick up the mattress I don't -- you know, you get it  
20 and then slide one end and then the other, because it's  
21 only on the back.

22 Q When Betty came to work at Quality Inn, did  
23 she tell you anything about her past medical history or  
24 any problems that she might have?

25 A Yeah. One day she complained about being --

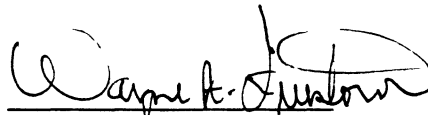
**CERTIFICATE OF MAILING**

I hereby certify that on 20 day of JULY, 1995, I caused to be mailed by First-Class Mail, postage pre-paid, a true and correct copy of the foregoing Brief of Petitioner/Appellant Betty Ann Romero to the following:

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A handwritten signature in black ink, appearing to read "Wayne A. Freestone", written over a horizontal line.

Wayne A. Freestone  
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